IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2170 OF 2003

Mr. F.A. Ahmedababi,]
E-502, Sagar Apartment,]
Near Play Ground, Moti-Daman,]
U.T. 396220.] .. Petitioner

Versus

Dharam Estates & Investments Ltd.,]
1, Quay Street, Darukhana,]
Mazgaon, Mumbai - 400 010.] .. Respondents

Mr. V.M. Bhardwaj for the petitioner.

Mr. Kiran S. Bapat for the respondents.

CORAM: ANOOP V. MOHTA, J.

DATED: 31ST MARCH, 2006

ORAL JUDGMENT. :

. The petitioner has challenged an Award dated 21st March, 1998, passed by the First Labour Court at Mumbai in Reference (IDA) No.919 of 1988 and also the order of Review dated 16th April, 2003 in Misc. (Review) Application (IDA) No.72 of 1998 by which a Reference sent by the Deputy Commissioner of Labour (Conciliation), Mumbai, under Section 10(1) and 12(5) of the Industrial Disputes Act, 1947 (for short "ID Act")

for adjudication of a dispute between the petitioner and the respondents over the demand of reinstatement with full back wages and continuity of service with effect from 25th November, 1987, was rejected. It has been held that the termination of the service of the petitioner was legal.

2. On 19th November, 2003, while admitting the present Writ Petition, this Court observed that *"The Petition involves arguable question of law as to whether the provisions of Section 25(f) of the Industrial Disputes Act had been complied with and whether the termination of the petitioner amounts to retrenchment."*

3. Heard the learned counsel for the parties. The petitioner had been working with the respondent-company for about three years when the respondent terminated his services on 25th November, 1987, on the ground of irregular attendance and disobedience. As a dispute was raised by the petitioner, the Reference was sent by the Deputy Commissioner before the First Labour Court at Mumbai. Petitioner has filed his Statement of Claim. Respondent appeared and filed its Written Statement and prayed that the Reference should be rejected. After giving one month’s wages in lieu of notice, the service of the

petitioner was terminated from 25th November, 1987. The petitioner did not lead any oral evidence. The respondent-company examined one witness Shri A.D. Agarwal in support of their documentary evidence. It was the company's case that the petitioner had collected his dues and left the job. Both the parties relied on number of authorities. After considering the rival contentions and the fact that the petitioner failed to discharge the initial burden of proof, the Reference was rejected by the impugned order. The petitioner, thereafter preferred a Review Application on 6th August, 1998. By an order dated 16th April, 2003, the same was also rejected. Therefore, the present Petition.

4. In the present case, as per Rule 16 of the ID Act (Bombay Rules, 1957), after Reference, a due notice was served on the petitioner who,in turn, had filed the Statement of Claim. The petitioner has contended and prayed in the said claim for reinstatement with back wages that the termination was illegal and bad in law. The burden, therefore, lies on the petitioner to prove the case of illegal termination. In the present case, admittedly, inspite of full opportunity given to the petitioner, no evidence was led to prove his allegations. The company's Written Statement and the documents have been duly supported by the evidence of

Mr. Agarwal. The company further demonstrated on record the reason for the termination in question, which was taken note of by the Labour Court while rejecting the Reference in question. In absence of any contrary evidence, the allegations and the reason for termination cannot be said to be baseless and false. In the present case, even assuming for a moment that the petitioner failed to lead evidence, still the Court need not pass orders without considering the evidence and/or material of the respondent-company, but after assessing the material placed on the record as the Labour Court was of the view that the order of termination was proper and within the framework of law by following the due procedure of issuing notice, I see there is no reason to interfere with the said finding, specially in the facts and circumstances of the case.

5. The learned counsel appearing for the petitioner, however, submitted that admittedly no chargesheet or show cause notice in respect of any statement Annexures A and B was issued to the petitioner. Therefore, on this ground itself, even though petitioner failed to lead any evidence, the termination cannot be said to be in accordance with law. He further contended, based on the cross-examination of Mr. Nitin Paranjape, that the company had offered him

only notice to pay and not retrenchment compensation and that itself was sufficient to grant him the relief as prayed. The learned counsel for the respondents, however, resisted the same and pointed out the Affidavit in support of examination-in-chief of the respondent's Director whereby the respondent supported their action that the petitioner was irregular in his attendance. He remained absent unauthorisedly, without leave and without prior permission of the Management. He had the habit of reporting late for duty and leaving Office early, without permissions of his superiors. Inspite of warnings, he failed to improve his conduct. Therefore, his services were terminated on 25th November, 1987 by offering him one month's wages in lieu of notice and salary for the month of November, 1987 and leave wages. Therefore, his service was terminated in accordance with law. The supporting material was also placed on the record. It is further contended that the petitioner was not interested in service and had collected his dues and left the service. There was no question of paying any retrenchment compensation to the petitioner.

6. The counsel for the respondent-company further contended that inspite of repeated opportunity available and given to the petitioner, even in the present Reference proceedings after filing of Written Statement

on 22nd August, 1989, he did not file any documents or lead any oral evidence. The issues were framed sometime on 16th November, 1995 and the matter was adjourned for evidence of the petitioner from time to time and finally, order was passed on 3rd November, 1987 of no evidence from the petitioner and respondent No.1 was directed to lead evidence. The petitioner took no steps to set aside and/or sought permission to lead any evidence after the order dated 3rd November, 1987. The respondent led evidence by filing Affidavit on 17th November, 1987. No one opposed the same. Petitioner's Advocate sought adjournments since then upto 17th February, 1992, and finally the respondent witness was cross-examined on 23rd February, 1992. The impugned Award was passed on 21st March, 1992. The petitioner instead of challenging the same, had preferred the Review Application which was also dismissed. In this background also, there is no case made out by the petitioner to interfere with the order passed by the Labour Court.

7. The petitioner could have submitted his case by leading evidence before the Labour Court. The lack of chargesheet, in the facts and circumstances of the case, in no way supports the case of the petitioner. The Labour Court, based on the evidence and material

available on the record, committed no wrong in rejecting the Reference. The termination of the petitioner was, therefore, proper and legal. The claim for reinstatement with full back wages and continuity of service was misconceived and rightly rejected. In this background, the issue as referred while admitting the Petition on 19th November, 2003, in Reference under Section 25(f) of the Industrial Disputes Act and whether the termination of the petitioner amounts to retrenchment, need to be answered as follows.

8. The Apex Court in **State of Punjab Vs. Jagir Singh, (2004) 8 SCC, 129**, while interpreting Section 25(f) of the ID Act in reference to the same issue of termination held that if the termination of service is for a misconduct, the question of payment of any retrenchment compensation or service of any statutory notice would not arise. The observations therein are as follows:

> "If the services of the workman were terminated for misconduct, the question of payment of any retrenchment compensation or service of any statutory notice would not arise. The question of compliance with the provisions of Section 25-F of the Industrial Dispute Act would arise, if the services of the workman concerned were terminated on a ground other than misconduct."

In the present facts and circumstances, as admittedly the termination of the petitioner was on the basis of "misconduct" the above judgment clinches the issue in view of the observations as reproduced above and needs no further discussion.

9. The judgments cited by the petitioner's counsel are totally distinct and distinguishable on facts itself. In **Kailash Nath Gupta Vs. Enquiry Officer, Allahabad Bank & Ors., AIR 2003, S.C. 1377** the question was of proportionality of punishment and the power of the Court to interfere with the punishment imposed by the disciplinary authority. The said judgment itself observed that such power is extremely limited. In the present case, the disciplinary authority, as well as, the Labour Court have considered the relevant facts and, therefore, there is no case made out to interfere with the order of punishment also. In **State Bank of India & Ors. Vs. K.P. Narayanan Kutty, 2003 AIR SCW, 634** there was a disagreement of disciplinary authority with some findings of the Enquiry Officer. Therefore, it was held that the opportunity of hearing to the delinquent officer was necessary. There is no such case in hand. In **D.K. Yadav Vs. J.M.A. Industries Ltd., (1993) S.C.C., 259** the case was based

on the Standing orders as contemplated under Bombay Industrial Employment (Standing Orders) Rules, 1959. In the present case, there is no material placed on the record to support that the case of the petitioner falls within the ambit of any Standing orders. Therefore, **M/s. Lakshmi Precision Screws Ltd. Vs. Ram Bhagat, AIR 2002, S.C., 2914** is of no help to the petitioner being a case on conditions of Standing Orders. In the present case, the principle of natural justice and fairplay have been complied with. As observed, there was no question of retrenchment compensation in the present case as termination was based on the misconduct.

10. Therefore, the Apex Court's decision on principle of natural justice is of no help to the petitioner. Those cases are: **Punjab National Bank Vs. Kunj Bihari Misra, AIR 1998, S.C.C., 2713**; **Nar Singh Pal Vs. Union of India, AIR 2000, S.C., 1401**. The learned counsel appearing for the respondent contended that the petitioner failed to avail the opportunity which was available to him. Now, therefore, he cannot re-agitate the same issue in the present Writ Petition. The due enquiry was conducted in the present case by following the rules of natural justice. The action taken based on such enquiry and as endorsed by the Labour Court needs no interference. See **T.N.C.S.**

Corpn. Ltd. Vs. K. Meerabai (2006) 2 S.C.C., 255. The scope of judicial review in such matter is very limited.

11. Taking all this into account and as admittedly petitioner failed to lead evidence in support of his case, there is nothing to justify the allegations of victimization or action not taken in good faith; and/or in the colourable exercise of the employer's power; or for false reasons. In view of this, the present Writ Petition is dismissed. Rule discharged. No order as to costs.

Sd/-
[ANOOP V. MOHTA, J.]